

This handout provides information about how to appeal a land use decision issued by the Department of Planning & Community Development (PCD). Land use decisions made by the Hearing Examiner or City Council follow different rules of appeal. We touch on but don't really cover these; please see Handout L-20, How to Participate in a Land Use Decision, and contact the Land Use Desk in Development Services or the project planner for information about appealing these other types of decisions.

What land use decisions are appealable?

All land use decisions are appealable. *Where* they are appealed is determined by what decision process is used.

Administrative Decisions

Decisions made by the director of the Department of Planning & Community Development, called Process II decisions, are appealable to the Bellevue Hearing Examiner. The majority of our projects require Process II (or administrative) decisions:

- Administrative Amendments to Conditional Use, Preliminary Plat, and Planned Unit Development Approvals
- Administrative Conditional Uses
- Design Reviews
- Home Occupation Permits
- Interpretations of the Land Use Code
- Preliminary Short Plats
- SEPA (State Environmental Policy Act) determinations in most cases
- Variances
- Small Lot Protected Area Development Exceptions
- Master Development Plans for Medical Institution District

Hearing Examiner Decisions

Decisions made by the Hearing Examiner, called Process I decisions, are appealed to the City Council:

- Conditional Uses and Shoreline Conditional Uses
- Commercial or Multifamily Protected Area Development Exceptions
- Planned Unit Developments
- Preliminary Subdivisions
- Shoreline Conditional Uses

The decision of the City Council on appeal from the Hearing Examiner is appealed to Superior Court.

Quasi-judicial City Council Decisions

Decisions made by the City Council, called Process III decisions, are appealed to Superior Court:

- Site-specific rezones
- Conditional Use, Preliminary Plat, Planned Unit Development, and Protected Area development exception projects within the jurisdiction of the East Bellevue Community Council

Shoreline Decisions

Shoreline Variances and Shoreline Substantial Development approvals are appealable directly to the State Shorelines Hearings Board.

Other Decisions

Land use decisions that have minor impact and involve the exercise of little or no discretion—such as boundary line adjustments, final plats, land use exemptions, vendor cart permits, temporary use permits, and temporary encampment permits (a Process V decision)—are appealable directly to Superior Court.

Who can file appeals?

The permit applicant or any person who submitted written comments to PCD prior to the date the decision was issued may appeal. If you submit written comments, you will receive a copy of the Weekly Permit Bulletin that contains the notice of decision for the project you wrote about. The Weekly Permit Bulletin will state the decision and the end of the appeal period. You will also receive a copy of the written staff report if one was prepared in support of the decision.

When and where do I file an appeal?

Administrative or Process II appeals (to the City Council or Hearing Examiner) must be filed with the City Clerk's Office no later than 5 p.m. on the last day of the appeal period. The standard appeal period is 14 days from the date the decision is published in the Weekly Permit Bulletin. Appeals of decisions to Superior Court are governed by court rules.

There are 2 exceptions:

- If our decision includes a SEPA determination of Non-Significance (DNS), for which state law requires a comment period, the appeal period is 21 days.
- Appeals of a Shoreline Substantial Development approval or a Shoreline Variance must be submitted to the State Shoreline Hearings Board within 21 days.

Specific appeal deadlines are noted in the Weekly Permit Bulletin (or in the staff report) for each appealable decision. We cannot accept appeals after these deadlines. If you are considering an appeal, watch for the decision publication so you can submit your appeal on time. The project manager can provide an estimate of the publication date and can confirm the dates of the appeal period.

What information should be included in the appeal?

Appeals must be submitted in writing, together with an Appeal Notification Form, available from the City Clerk's Office. There is no charge to file an appeal; however, the applicant will be charged for staff time to respond to an appeal. If the applicant is the appellant, charges associated with this time may be waived or refunded if the applicant substantially prevails in the appeal.

In your appeal, clearly state why you think the decision is wrong and include facts or observations about how the project fails to meet the code requirements. (The assigned planner can provide these requirements or criteria.) Explain how you are affected by the decision and what remedy or alternative you propose. Be as specific as possible; provide data or any other relevant information you think may have been overlooked in the decision. Specific appeal

requirements are contained in the Land Use Code and rules for the Hearing Examiner.

Who makes the appeal decision and how is the decision made?

On Process II appeals the Bellevue Hearing Examiner will hold a hearing, consider the appeal, and issue a decision.

All parties to the appeal—including the city, the applicant, and the appellant(s)—may participate in the hearing by presenting testimony and calling witnesses to testify. If you are not a party to the appeal, you will not be able to testify at the hearing unless called as a witness by one of the parties or specifically authorized by the Hearing Examiner.

The hearing is similar to a very informal court hearing. You do not need an attorney. You may call the Hearing Examiner at 425-452-6935 to request a copy of the Hearing Examiner's Rules of Procedure governing the hearing process.

For information about the process for shoreline appeals, talk with a planner at the Land Use Desk or call the state Shoreline Hearings Board at 360-459-6327. Copies of a handout describing the Shoreline Hearings Board and its appeal process are available from the land use planner in Development Services.

What standards does the Hearing Examiner use in making the decision?

The Hearing Examiner will decide whether PCD correctly applied the code requirements to the application. The burden of proof is on the appellant to demonstrate why the PCD decision is in error. To overturn a PCD decision, the Hearing Examiner must conclude that the department's decision is "not supported by a preponderance of the evidence." It is, therefore, important to include specific background information that supports your position, particularly if you believe the information was not considered in our decision.

We will submit the entire file to the Hearing Examiner. You may use information in the file to support your position. You may also ask the city planner or other reviewers to explain information contained in the file in order to be sure everyone has a complete understanding of the issues. You

may submit your own information to be included in the city file before a decision is made, or you may submit information directly to the Hearing Examiner at the appeal or bring experts or specialists to support your position.

How long does an appeal take?

Typically, an appeal is resolved within about 60 days. Unless the parties to an appeal agree to an extended time period, appeals must be completed within 90 days of the close of the appeal period.

How are appeals handled for projects with more than one land use decision?

If a project requires more than one land use decision (e.g., land use decision and a SEPA threshold determination), all the decisions will usually be issued in one report and any appeals consolidated in a single hearing.

In some cases, a project may require a PCD administrative decision and a decision made by the Hearing Examiner or the City Council. Examples would be a SEPA decision on a conditional use, PUD, or rezone. In these cases, the administrative decision will be published in a report that also includes the department's recommendation for the Hearing Examiner or City Council action (the conditional use, PUD, or plat). If the administrative decision is appealed, the appeal will be considered as part of the Hearing Examiner's public hearing on the action.

When is the land use decision final?

Our administrative decisions are final on the day following expiration of the appeal period, assuming no appeal is filed. If an appeal is filed, the decision is final when the Hearing Examiner or City Council's decision is issued.

Can the final Land Use decision of the city be further appealed?

Land Use decisions of the Hearing Examiner or City Council can be appealed to Superior Court after the city's administrative appeal process is complete. The final decision will include the deadline for filing and where the appeal should be filed (Superior Court or Shoreline Hearings Board).

When can construction begin?

We do not allow construction until after we have decided all city appeals. If a land use decision is appealed to Superior Court or the Shoreline Hearings Board, construction may begin but would be at the applicant's own risk.

Where can I find additional information?

- Bellevue City Code (BCC) 20.35.045, Land Use Decisions—when final
- BCC 20.35.070, Appeal of City Land Use decisions to Superior Court
- BCC 20.35.150, Appeal of Hearing Examiner Decision
- BCC 20.35.250, Appeal of Process II Decisions
- BCC 20.35.350, Appeal of Hearing Examiner Recommendation
- BCC 22.02.080, 22.02.150, SEPA Appeals
- Revised Code of Washington (RCW) 36.70C, Appeals to Superior Court.
- Handout L-20, How to Participate in a Land Use Decision

This document is intended to provide guidance in applying certain Land Use Code regulations and is for informational use only. It cannot be used as a substitute for the Land Use Code or for other city codes, such as the Construction Codes. Additional information is available from Development Services at Bellevue City Hall or on the city website at www.bellevuewa.gov.

For land use regulations that may apply to your project, contact the Land Use Information Desk in Development Services. Phone: 425-452-4188. E-mail: landusereview@ci.bellevue.wa.us. Assistance for the hearing impaired: dial 711.

